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**American Short Line and
Regional Railroad Association**

The Voice of America's Independent Railroads

February 27, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings

FEB 29 2012

Part of
Public Record

RE: Finance Docket No. 35583 *Eastern Alabama Railway LLC v. Utilities Board of
the City of Sylacauga*

Dear Ms. Brown:

Based on the public filings in this proceeding the American Short Line and Regional Railroad Association (ASLRRA) has learned that at least three of its members are engaged in disputes with utility companies concerning crossings of the railroads' property.

ASLRRA is very concerned that utilities are attempting to condemn small railroad property in state courts with potentially adverse effect on railroad operations, safety, and revenue. At issue is the question of whether state courts should solely decide property issues that will directly affect and potentially hinder railroad operations. If the Surface Transportation Board rules that only local courts should determine the effect that condemnation has on small railroad operations and safety, then a multiplicity of inconsistent local court rulings will hinder the national rail transportation system and create potentially dangerous circumstances. The prevention of a hodgepodge of conflicting laws and interpretations is one of the reasons Congress created the Board and its predecessor Interstate Commerce Commission, and the Board should not abdicate its role here.

The Surface Transportation Board has said that it will consider preempting state actions as applied "if they would have the effect of unreasonably burdening or interfering with rail transportation, which involves a fact-specific determination. *See*

Borough of Riverdale—Petition for Declaratory Order, FD 35299, slip op. at 2 (STB served Aug. 5, 2010).” *Louisville & Indiana Railroad-Petition for Declaratory Order*, FD 35536 slip. op. at 3 (STB served February 23, 2012). In the current disputes utilities seek to condemn railroad property to circumvent the appropriate contractual obligations which would prevent unsafe practices such as the poor construction of an underground pipeline or the presence of unprotected non-railroad employees on an active railroad right-of-way. The Surface Transportation Board should not let that happen. Small railroads take the safety of their operations extremely seriously. Their ability to operate safely, efficiently and in compliance with federal regulations should not be compromised by third parties who use state condemnation processes to insulate themselves from the costs associated with safe and prudent railroad practices.

Thus, in order to provide a venue for short line railroads to seek relief where condemnation proceedings may unreasonably burden or interfere with railroad operations, ASLRRA requests the Board to rule in the current proceeding that it reserves the right to determine whether federal preemption of state condemnation procedures is appropriate based on the facts of a specific case.

Respectfully,

Keith T. Borman

Keith T. Borman

Vice President & General Counsel

American Short Line and Regional Railroad Association

Cc: Parties of Record